IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NOS. 143 TO 150 AND 169 OF 2004.

WRIT PETITION NO. 143 OF 2004.

Mr. Remedios E.A. Rodrigues,
r/o G-3, Newton Apts.,
Mangor Hill, Vasco da Gama. ... Petitioner.

Versus

1. M/s. Goa Shipyard Limited,
   a Company incorporated
   under the Companies Act,
   1956 through its Company
   Secretary, having regd.
   office at Vaddem,
   Vasco da Gama.
2. Shri R.K. Sharma,
   Offg. General Manager
   (Production), Goa
   Shipyard Limited,
   Vaddem, Vasco da Gama. ... Respondents.

WRIT PETITION NO. 144 OF 2004.

Mr. Lopinho Xavier,
r/o H. No. 289, Uddo,
Quelossim, Cortalim. ... Petitioner.

Versus

1. M/s. Goa Shipyard Limited,
   a Company incorporated
   under the Companies Act,
   1956 through its Company
   Secretary, having regd.
   office at Vaddem,
   Vasco da Gama.
2. Shri R.K. Sharma,
   Offg. General Manager
   (Production), Goa
   Shipyard Limited,
   Vaddem, Vasco da Gama. ... Respondents.

WRIT PETITION NO. 145 OF 2004.

Mr. Antonio Eric Fernandes,
r/o H. No. 174, C/o Pedro
Antonio Fernandes, Vaddem,
Vasco da Gama. ... Petitioner.

Versus

1. M/s. Goa Shipyard Limited,
   a Company incorporated
   under the Companies Act,
   1956 through its Company
   Secretary, having regd.
   office at Vaddem,
   Vasco da Gama.
2. Shri R.K. Sharma,
   Offg. General Manager
   (Production), Goa
   Shipyard Limited,
   Vaddem, Vasco da Gama. ... Respondents.

WRIT PETITION NO. 146 OF 2004.

Mr. Nicolau A. Pereira,
r/o Mundvel Vaddo,
Behind Nataraj Hotel,
Vasco da Gama. ... Petitioner.

Versus

1. M/s. Goa Shipyard Limited,
   a Company incorporated
   under the Companies Act,
   1956 through its Company
   Secretary, having regd.
   office at Vaddem,
   Vasco da Gama.
2. Shri R.K. Sharma,
   Offg. General Manager
   (Production), Goa
   Shipyard Limited,
   Vaddem, Vasco da Gama. ... Respondents.

WRIT PETITION NO. 147 OF 2004.

Mr. Basavraj Shirahatti,
C/o Sheru Bhagat, H. No. 12,
Opposite Housing Board
Colony, New Vaddem,
Vasco da Gama. ... Petitioner.

Versus

1. M/s. Goa Shipyard Limited,
   a Company incorporated
   under the Companies Act,
   1956 through its Company
   Secretary, having regd.
   office at Vaddem,
   Vasco da Gama.
2. Shri R.K. Sharma,
   Offg. General Manager

(Production), Goa
Shipyard Limited,
Vaddem, Vasco da Gama. ... Respondents.

WRIT PETITION NO. 148 OF 2004.

Mr. Pandurang Bhagat,
Near Govt. High School,
New Vaddem,
Vasco da Gama. ... Petitioner.

Versus

1. M/s. Goa Shipyard Limited,
   a Company incorporated
   under the Companies Act,
   1956 through its Company
   Secretary, having regd.
   office at Vaddem,
   Vasco da Gama.
2. Shri R.K. Sharma,
   Offg. General Manager
   (Production), Goa
   Shipyard Limited,
   Vaddem, Vasco da Gama. ... Respondents.

WRIT PETITION NO. 149 OF 2004.

Mr. K. Satyanarayan,
H. No. 251, New Vaddem,
Ganapati Temple, Near
Sunrise Bar,
Vasco da Gama. ... Petitioner.

Versus

1. M/s. Goa Shipyard Limited,
   a Company incorporated
   under the Companies Act,
   1956 through its Company
   Secretary, having regd.
   office at Vaddem,
   Vasco da Gama.
2. Shri R.K. Sharma,
   Offg. General Manager
   (Production), Goa
   Shipyard Limited,
   Vaddem, Vasco da Gama. ... Respondents.

WRIT PETITION NO. 150 OF 2004.

Mr. Abdul Razak Khan,
H. No. 235, Rumdawada,

Near I.O.C. Compound,
Mormugao Harbour,
Vasco da Gama. ... Petitioner.

Versus

1. M/s. Goa Shipyard Limited,
   a Company incorporated
   under the Companies Act,
   1956 through its Company
   Secretary, having regd.
   office at Vaddem,
   Vasco da Gama.
2. Shri R.K. Sharma,
   Offg. General Manager
   (Production), Goa
   Shipyard Limited,
   Vaddem, Vasco da Gama. ... Respondents.

WRIT PETITION NO. 169 OF 2004.

Mr. Deepak Tirodker,
Damodar Apartment,
Flat No. 5, Bhute-Bhat,
Vasco da Gama. ... Petitioner.

Versus

1. M/s. Goa Shipyard Limited,
   a Company incorporated
   under the Companies Act,
   1956 through its Company
   Secretary, having regd.
   office at Vaddem,
   Vasco da Gama.
2. Shri R.K. Sharma,
   Offg. General Manager
   (Production), Goa
   Shipyard Limited,
   Vaddem, Vasco da Gama. ... Respondents.

Mr. A.V. Nigalye, Advocate for the Petitioner in all Petitions.

Mr. M.S. Bandodkar, Advocate for the Respondents in all Petitions.

Coram : P.V. HARDAS AND
D.G. KARNIK, JJ.

Date : 27th April 2004.

ORAL JUDGMENT (PER HARDAS, J.)

Rule. Rule made returnable forthwith. By consent of the learned counsel for the parties, these petitions are taken up for final hearing at the stage of admission.

2. In all these petitions the challenge to the issuance of the impugned Notification being identical, all these petitions can be decided finally by this Judgment.

3. In view of the limited challenge, which is raised in the present petitions, it is not necessary to advert to the facts in each case in detail. Facts, as are necessary for the decision of these petitions, are stated hereunder:-

The petitioner in Writ Petition No. 143 of 2004 alongwith the petitioners in the other petitions was placed under suspension pending the Departmental Inquiry on account of his active participation with the other workmen of the Shipyard in several acts of misconduct, on 3rd January 1998, at the main gate of the Shipyard and also in the premises of the Court of Judicial Magistrate, First Class, at Vasco da Gama. A

charge-sheet was presented in respect of the said incident under Clause 29 of the Certified Standing Orders of the Company. Various charges were enumerated and the petitioner and the other workmen were called upon to submit their explanation to the said charges. After filing of the reply denying the aforesaid charges, a common inquiry was held against the petitioner and the other petitioners who were charge-sheeted in the same incident. After conclusion of the inquiry, the Inquiry Officer held the petitioner guilty in respect of charge at Serial No. 1, which reads as under:-

> "1. Going on illegal strike or abetting, inciting, instigating or acting in furtherance thereof or resorting to obstruction aimed at or resulting in paralysing the normal conduct or work of the Company."

The Inquiry Officer in respect of the other charges held them as not proved.

4. The Disciplinary Officer, that is, the Officiating General Manager (Production), issued a show cause notice to the petitioner and the other workmen calling upon the petitioner and the other workmen to show cause within 7 days of the receipt of the said notice as to why the petitioner and the other workmen

should not be dismissed from service. The said show cause notice, dated 17th February 2004 and dated 23rd February 2004 in Writ Petition No. 169 of 2004, is impugned in this batch of petitions. In the said show cause notice, the authority issuing the show cause notice recorded his tentative findings that in view of the evidence on record and in view of the seriousness of the offence, the continuance of the petitioner and the other workmen in the Company will not be in the interest of the Organization. The Disciplinary Officer was inclined to take a view different from the Inquiry Officer. The said show cause notice was also accompanied by a document styled as Annexure 1 containing the grounds of the authority taking a review. The petitioner and the other workmen after receipt of the show cause notice sought extension for filing their reply and showing cause.

5. Mr. Nigalye, the learned counsel appearing on behalf of the petitioners in this batch of petitions, has placed reliance on the Judgment of the Apex Court in **Punjab National Bank and others v. Kunj Behari Misra,** 1998 LAB.I.C. 3012. Reliance is specifically placed on the contents of the report at paragraphs 16, 17 and 18. The Apex Court in the aforesaid Judgment has held:-

> "When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with inquiry officer's report and while recording a finding of guilt, imposes punishment on the officer. In any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry.
>
> The principles of natural justice have, therefore, to be read into Regn. 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings."

6. On the basis of the Judgment of the Supreme Court in Punjab National Bank and others v. Kunj Behari Misra (supra), it is urged by Mr. Nigalye, the learned counsel appearing for the petitioners, that it was incumbent upon the Disciplinary Authority to have issued a show cause notice to the petitioners before the concerned authority had reached a finding that the reasons given by the Inquiry Officer for holding the

petitioners not guilty in respect of the other charges need interference. Admittedly, in the present case, such a show cause notice has not been given at all.

7. The show cause notice, which is impugned in the present petitions, only calls upon the petitioners in this batch of petitions to show cause in respect of the punishment in respect of dismissal from service and not to show cause in respect of the grounds contemplated by the authority for taking a view different from the view taken by the Inquiry Officer.

8. In the affidavit-in-reply filed by one Ramchandra C. Asukar, Company Secretary and Deputy General Manager (Legal) of the respondent no. 1 Company, particularly in paragraph 11, it is stated as hereunder:-

> "11. I say that in the event and without prejudice if this Hon'ble Court come to the conclusion at the admission stage that when the disciplinary authority is differing the findings of the enquiry officer and comes to different findings it is obligatory on the part of the Disciplinary authority to receive the explanation on his findings from the Charge Sheeted workman before issuing any show cause or otherwise, the Respondent would abide by the said directive of this Hon'ble Court."

9. In view of the contentions of paragraph 11 referred to above, Mr. Bandodkar, the learned counsel appearing on behalf of the respondents, has very fairly stated that in view of the Judgment of the Supreme Court in Punjab National Bank and others v. Kunj Behari Misra (supra), the respondents are willing to grant a personal hearing to the petitioners in this batch of petitions. According to us also, the respondents had not issued the show cause notice as is contemplated in the Judgment of the Supreme Court in Punjab National Bank and others v. Kunj Behari Misra (supra). The Judgment of the Supreme Court in clearest terms lays down that before the Disciplinary Authority differs with the view of the Inquiry Officer and proposes to come to a different conclusion, a reasonable opportunity of hearing should be granted to the delinquent employee to show cause against the reversal of the findings which have been recorded in his favour by the Inquiry Officer. Undisputedly in the present case, such a notice has not been issued. The learned counsel has also not been able to point out any other Judgment of the Supreme Court taking a contrary view.

10. In view of this, the impugned show cause notice is unsustainable and deserves to be quashed and

set aside. We, therefore, make it clear that the respondents will be at liberty to issue a show cause notice to the petitioners in this batch of petitions for showing cause against the proposal of the Disciplinary Authority taking a different view from the view taken by the Inquiry Officer.

11. In the result, therefore, rule is made absolute in terms of prayer Clause (a). We should not be understood as deciding any question in respect of the action proposed to be taken, if at all, by the respondents in pursuance of a fresh show cause notice. In the circumstances, there shall be no order as to costs.

(P.V. HARDAS)
JUDGE.

(D.G. KARNIK)
JUDGE.

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